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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/600,196 | 06/20/2003 | Minoru Ikuta | F-7857 | 7773 |

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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
SUITE 4000
NEW YORK, NY 10168

EXAMINER

GRAVINI, STEPHEN MICHAEL

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3749

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/600,196 | Applicant(s) IKUTA ET AL. | |
| | Examiner Stephen Gravini | Art Unit 3749 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12-15-04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Schweitzer (US 4,029,936). Schweitzer is considered to disclose the claimed invention comprising:

a gas passage and at least one burner port **86**;

said gas passage and burner port being formed by:

forming first and second planar metal sheets. each sheet comprising first and second primary metal materials. said first material being different from said second material (please see column 5 line through column 6 line 3),

forming on said first and second sheets- a portion of said gas passage on said first material and a portion of said at least one burner port on said second material (please see column 9 lines 4-14); and

connecting said first and second sheets for forming said gas passage and said at least one burner port (please see column 6 lines 52-64). Schweitzer is also considered to show in the drawings first and second planar single sheet centerline joint or separate. Schweitzer is also considered to inherently disclose the claimed first material high heat

resistance and second material high workability because the disclosed ceramic material anticipates a first material high heat resistance while the disclosed steel anticipates a second material workability, because both those materials perform the claimed properties.

Claim Rejections - 35 USC § 103

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schweitzer in view of Kobayashi et al. (US 4,624,631). Schweitzer is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the press molding. Kobayashi, another burner head, is considered to disclose press molding at column 13 lines 43-54. It would have been obvious to one skilled in the art to combine the teachings of Schweitzer with press molding, considered to be taught by Kobayashi, for the purpose of of fabrication of burner assemblies using different available properties. Furthermore, although Schweitzer is considered to inherently anticipated the claimed first material high heat resistance and second material high workability, it would have been an obvious matter of design choice to provide those features for the claimed materials because it is considered that the disclosed ceramic has an obvious feature of high heat resistance and the disclosed steel has an obvious feature of workability.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schweitzer in view of Lee (US 4,048,290). Schweitzer is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed butt welding. Lee, another burner head, is considered to disclose butt welding

Art Unit: 3749

at column 6 lines 15-32. It would have been obvious to one skilled in the art to combine the teachings of Schweitzer with butt welding, considered to be taught by Lee, for the purpose of allowing durable fabrication of burner assemblies using various fastening means.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schweitzer in view of Hornby (US 4,048,290). Schweitzer is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed laser welding. Hornby, another burner head, is considered to disclose laser welding at column 4 lines 21-39. It would have been obvious to one skilled in the art to combine the teachings of Schweitzer with laser welding, considered to be taught by Hornby, for the purpose of allowing durable fabrication of burner assemblies using various fastening means.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/911,167. Although the conflicting claims are not identical,

they are not patentably distinct from each other because the present application contains all the elements in the copending application but in a broader claim recitation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new grounds of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference A-C and N, cited with this action, are considered to disclose burner assemblies.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3749

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira S. Lazarus can be reached on 571 272 4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG
February 3, 2005

